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9 IP SOLUTIONS, INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 IP SOLUTIONS, INC.,) Case No. 07-CV-02774 JF
13 Plaintiff,)
14 vs.) **PLAINTIFF'S ANSWER TO CROSS-**
15 BANK OF AMERICA, N.A. and BANK OF) **COMPLAINT**
16 AMERICA TECHNOLOGY AND)
17 OPERATIONS, INC.,)
18 Defendants.)
19 _____)

20 For its Answer to Defendants' Cross-Complaint, Plaintiff IP Solutions, Inc. ("IPS")
21 states as follows:
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23 1. Plaintiff is without knowledge or information sufficient to form a belief as to the
24 truth of the allegations of Paragraph 1 of the Cross-Complaint, and on that basis denies them.

25 2. Plaintiff is without knowledge or information sufficient to form a belief as to the
26 truth of the allegations of Paragraph 2, and on that basis denies them.
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1 3. Plaintiff admits that it is a Delaware corporation with its principal place of
2 business in San Mateo, California, and admits that it provides management training courses
3 to clients, and denies the remaining allegations of Paragraph 3 of the Cross-Complaint.

4 4. Plaintiff admits the allegations of Paragraph 4 of the Cross-Complaint.

5 5. Paragraph 5 of the Cross-Complaint consists of legal conclusions, and Plaintiff
6 denies the allegations of Paragraph 5 of the Cross-Complaint.

7 6. Paragraph 6 of the Cross-Complaint consists of legal conclusions, and Plaintiff
8 denies the allegations of Paragraph 6 of the Cross-Complaint.

9 7. Plaintiff admits that the Stanford Advanced Project Management program was a
10 project management course developed by IPS, and admits that Defendants engaged IPS to
11 provide a project management course; Plaintiff denies the remaining allegations of Paragraph
12 7 of the Cross-Complaint.

13 8. Plaintiff admits that Defendants and IPS executed a contract entitled General
14 Services Agreement (“Agreement”), and admits that Statement of Work #1 is attached as
15 Exhibit 1 to the Cross-Complaint, and denies the remaining allegations of Paragraph 8 of the
16 Cross-Complaint.

17 9. Plaintiff denies the allegations of Paragraph 9 of the Cross-Complaint.

18 10. Plaintiff denies the allegations of Paragraph 10 of the Cross-Complaint.

19 11. Plaintiff admits that Plaintiff and Defendants entered into a Statement of Work
20 #2, and that a copy is attached as Exhibit 2 to the Complaint, and denies the remaining
21 allegations of Paragraph 11 of the Cross-Complaint.

1 12. Plaintiff admits that it delivered two course manuals to Defendants, an instructor
2 guide and a participant guide, and denies the remaining allegations of Paragraph 12 of the
3 Cross-Complaint.

4 13. Plaintiff denies the allegations of Paragraph 13 of the Cross-Complaint.

5 14. Plaintiff admits that its copyrighted materials were used by Defendants, and
6 admits that the Defendants referred to the course in which Plaintiff's copyrighted materials
7 were used as the Project Management Foundations course, and denies the remaining
8 allegations of Paragraph 14.

9 15. Plaintiff admits that it trained trainers for use of its project management course,
10 and denies the remaining allegations of Paragraph 15 of the Cross-Complaint.

11 16. Plaintiff admits that the parties entered into Statement of Work #3, and that a
12 copy is attached to the Cross-Complaint, and denies the remaining allegations of Paragraph
13 16 of the Cross-Complaint.

14 17. Plaintiff admits that the content of Statement of Work #3 is set forth in Statement
15 of Work #3, and denies the remaining allegations of Paragraph 17.

16 18. Plaintiff admits that Statement of Work #3 contains provisions for payment to
17 IPS, and denies the remaining allegations of Paragraph 18 of the Cross-Complaint.

18 19. Plaintiff admits that Defendants used Plaintiff's copyrighted materials in
19 Defendants Project Management Foundations course, and denies the remaining allegations of
20 Paragraph 19 of the Cross-Complaint.

21 20. Plaintiff admits that it fully performed its obligations under Statement of Work
22 #3, and denies the remaining allegations of Paragraph 20 of the Cross-Complaint.

1 21. Plaintiff admits that it trained Defendants' employees, and denies the remaining
2 allegations of Paragraph 21 of the Cross-Complaint.

3 22. Plaintiff admits that it received some payments from Defendants, and denies the
4 remaining allegations of Paragraph 22.

5 23. Plaintiff admits that it met with Defendant Bank of America in 2006, and denies
6 the remaining allegations of Paragraph 20 of the Cross-Complaint.

7 24. Plaintiff admits that it met with Defendants in 2006, and admits that it accused
8 Defendants of violating its intellectual property rights, and Plaintiff denies the remaining
9 allegations of Paragraph 24 of the Cross-Complaint.

10 25. Plaintiff admits that it communicated with Defendants about payment for
11 copying of its copyrighted materials on several occasions, and denies the remaining
12 allegations of Paragraph 25 of the Cross-Complaint.

13 26. Plaintiff admits that it sent Defendants a letter in or about December, 2006
14 asserting ownership of its copyrighted materials and copying of the materials by Defendants
15 without authorization and without payment, and denies the remaining allegations of
16 Paragraph 26 of the Cross-Complaint.

17 27. Plaintiff admits that in or about February, 2007 Defendants sent IPS a letter
18 disputing Plaintiff's copyright infringement claims, and denies the remaining allegations of
19 Paragraph 27 of the Cross-Complaint.

20 28. Plaintiff admits the allegations of Paragraph 28 of the Cross-Complaint.

21 **FIRST COUNTERCLAIM FOR RELIEF**

22 29. Plaintiff realleges and incorporates by reference Paragraphs 1 through 28 above.
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1 30. IPS had the legal capacity to enter into the General Services Agreement.
2 Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the
3 remaining allegations of Paragraph 30 of the Cross-Complaint, and on that basis denies them.
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5 31. Paragraph 31 of the Cross-Complaint consists of legal conclusions, and Plaintiff
6 denies the allegations of Paragraph 31 of the Cross-Complaint.

7 32. Paragraph 32 of the Cross-Complaint consists of legal conclusions, and Plaintiff
8 denies the allegations of Paragraph 32 of the Cross-Complaint.

9 33. Paragraph 33 of the Cross-Complaint consists of legal conclusions, and Plaintiff
10 denies the allegations of Paragraph 33 of the Cross-Complaint.

11 34. Paragraph 34 of the Cross-Complaint consists of legal conclusions, and Plaintiff
12 denies the allegations of Paragraph 34 of the Cross-Complaint.
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14 **SECOND COUNTERCLAIM FOR RELIEF**

15 35. Plaintiff realleges and incorporates by reference Paragraphs 1 through 34 above.

16 36. Plaintiff denies the allegations of Paragraph 36 of the Cross-Complaint.

17 37. Plaintiff denies the allegations of Paragraph 37 of the Cross-Complaint.
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19 **THIRD COUNTERCLAIM FOR RELIEF**

20 38. Plaintiff realleges and incorporates by reference Paragraphs 1 through 37 above.

21 39. Plaintiff denies the allegations of Paragraph 39 of the Cross-Complaint.

22 40. Plaintiff denies the allegations of Paragraph 40 of the Cross-Complaint.

23 41. Plaintiff denies the allegations of Paragraph 41 of the Cross-Complaint.
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25 **FOURTH COUNTERCLAIM FOR RELIEF**

26 42. Plaintiff realleges and incorporates by reference Paragraphs 1 through 41 above.

27 43. Plaintiff denies the allegations of Paragraph 43 of the Cross-Complaint.
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1 44. Plaintiff admits that it provided its copyrighted material to Defendants, and
2 admits that the Project Management Foundations course materials incorporated Plaintiff's
3 copyrighted material. Plaintiff denies the remaining allegations of Paragraph 44 of the
4 Cross-Complaint.
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6 45. Paragraph 45 of the Cross-Complaint consists of legal conclusions, and Plaintiff
7 denies the allegations of Paragraph 45 of the Cross-Complaint.

8 **FIFTH COUNTERCLAIM FOR RELIEF**

9 46. Plaintiff realleges and incorporates by reference Paragraphs 1 through 45 above.

10 47. Plaintiff denies the allegations of Paragraph 47 of the Cross-Complaint.

11 48. Plaintiff denies the allegations of Paragraph 48 of the Cross-Complaint.

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13 49. Paragraph 49 of the Cross-Complaint consists of legal conclusions, and Plaintiff
14 denies the allegations of Paragraph 49 of the Cross-Complaint.

15 **AFFIRMATIVE DEFENSES**

16 **First Affirmative Defense (Failure to State a Claim)**

17 1. Each of the causes of action of Defendants' Cross-Complaint fails to state a claim
18 upon which relief can be granted.
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20 **Second Affirmative Defense (Waiver)**

21 1. Defendants breached Paragraph 22 of the General Services Agreement by failing
22 to engage in dispute resolution procedures as set forth therein.

23 2. Accordingly, each cause of action of the Cross-Complaint is barred under the
24 doctrine of waiver.
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Third Affirmative Defense (Estoppel)

1. Defendants breached Paragraph 22 of the General Services Agreement by failing to engage in dispute resolution procedures as set forth therein.

2. Accordingly, Defendants are estopped from prosecuting each cause of action of the Cross-Complaint.

Fourth Affirmative Defense (Waiver)

1. Defendants have, by their conduct herein, waived any breach based on absence of jurisdiction or venue.

WHEREFORE, Plaintiff prays:

1. That Defendants' Cross-Complaint be dismissed;
2. For award of its costs and fees; and
3. For such other and further relief as the Court deems just and proper.

Dated: September 4, 2007

TRIAL & TECHNOLOGY LAW GROUP
A Professional Corporation
Attorneys for Plaintiff
IP SOLUTIONS, INC.

By: _____
Robert A. Spanner